IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1550

WILLIAM J. VORBECK, et al.,
Appellants,

vs.

THEODORE D. McNEAL, et al.,
Appellees.

On Appeal from the United States District Court for the Eastern District of Missouri

BRIEF IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM

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ARGUMENT

Appellants Have Shown That There Is No Rational Relation Between the Exclusion of Police Officers From the Bargaining Rights Granted to Other Public Employees by § 105.520 R.S.

Mo. 1969 and the Asserted State Interest of Maintaining an Effective, Efficient and Disciplined Police Force.

Appellants reassert the arguments made in their Jurisdictional Statement under the heading "The Questions Are Substantial." Additionally Appellants wish to respond to appellee's contention that they have failed to demonstrate the lack of a rational relationship between the exclusion of police officers from the bargaining procedures granted to other public employees by §§ 105.510-520 R.S. Mo. and the asserted state interest of maintaining an effective, efficient and disciplined police force.

Appellants reemphasize that their complaint centers on the fact that they are treated differently from all other public employees in Missouri who are granted the bargaining rights created by § 105.510, R.S. Mo. Such other public employees include, for example, firemen who in Missouri have long enjoyed the benefits of the limited bargaining procedures set out in the Missouri Statute. Prior to the ruling of the District Court in the present case, appellants were denied their constitutional right to join or form a labor organization guaranteed to them by the association and free speech clauses of the First Amendment to the United States Constitution. The District Court recognized that appellants have such a right, and there is no appeal pending from that portion of the decision. Consequently the right of police officers to affiliate with a labor organization is not in issue here.

Appellants contend that in granting them the right to join the class for whom the bargaining procedures were created, the District Court should not then withhold from them the rights granted to all other members of the class to wit the right to meet, and confer with their employers and to reduce the results of these meetings to writing. The holding of the District Court is therefore erroneous.

The asserted state interest in maintaining an effective, efficient, disciplined police force is not rationally related to the exclusion

of police officers, who now have the right to **join** a union, from the bargaining procedures created by §§ 105.510-520 R.S. Mo. To the contrary the state interest will be safeguarded by the utilization of the orderly procedures set out in the statute.

There are two bases proposed by appellees for finding a rational relation between the rights withheld and the asserted state interest in this case. One: appellees apparently assert a threat of a police strike if police officers are granted the bargaining rights granted to all other public employees. See District Court Opinion at pp. 8-10. The other base apparently asserted is that police officers may divide their loyalty between the union and the police command structure and that this divided loyalty may lead to a situation in which a police officer may refuse an assignment or refuse to perform some act because of his union activities, thus jeopardizing the safety of property and populace. See Tr. at 38, 41. Appellants contend that they have shown that these assertions have no basis in fact or logic and that there is absolutely no rational relation between the withholding of the *bargaining procedures* from the now lawful police unions and the asserted state interest.

Fear of a police strike is a thread that has run throughout the course of this lawsuit. (Op. at 8-10) However, as pointed out both by the District Court in its opinion (Op. at 9), and by appellant's Brief in the District Court (Br. at 6), the right to strike is specifically withheld from all public employees in Missouri whether or not they are granted the bargaining rights established by §§ 105.510-520 R.S. Mo.

Thus, prevention of a police strike cannot form the rational basis for withholding the rights in question because such a strike is already legally prohibited by § 105.530 R.S.Mo., 1969. Granting the right in question (the right to communicate with the police board) would not increase and may in fact decrease the possibility of such an unlawful strike.

The only other possible base for establishing a rational relation between the exclusion of police officers from the bargaining procedures and the asserted state interest is the belief that somehow the granting of these rights to police officers might cause these officers to divide their loyalty between the union and the departmental command structure. This divided loyalty might then it is argued lead to a situation in which an officer might refuse an assignment or refuse to perform some act because of his union activities (Tr. at 38, 41), although it is entirely unclear as to how the right to "meet and confer," as opposed to the recognized right to join the union, might have such an effect.

The District Court stated in its Memorandum Opinion, that "There is no compelling reason for denying certain persons membership in organizations solely because of their status as policemen, where there is no showing that the organizations are detrimental to the sui generis, and para-military nature of police departments." (Op. at 8). Appellants fail to see how the function of an organization within the orderly perameters of §§ 105.-510-520 can possibly be detrimental to the operation of a police department if membership in the organization itself is found not to be detrimental. The function of the organization is its reason for being. The bargaining provisions of the statute are the only reason for "allowing" public employees to join labor organizations.

The suggestion that granting police officers the bargaining rights in question may cause him to become less loyal to the command structure is wholly without reasonable basis in fact. A police officer knows the consequences of disobeying a direct order. He is subject to immediate dismissal. This is common knowledge. Appellants in no way question the propriety of this procedure. Appellants are subject to the same sanctions for disloyalty and disobeyance of a lawful order regardless of what rights are granted to or withheld from them. Appellants simply contend that granting them the same bargaining rights granted

to all other public employees (including firemen) would have absolutely no effect of the internal discipline of the police department.

Appellants invite the Court's attention to the exhibit entitled "Summary of State Labor Laws" which was introduced into evidence in the District Court (Tr. at 36). This exhibit shows that forty states have enacted statutes which either compel or permit bargaining between police and their governing bodies, and in no state other than Missouri are police treated differently than other public safety employees with regard to bargaining rights. Appellants believe that this exhibit shows that such bargaining procedures in fact do not have any detrimental effect on the discipline, efficiency or effectiveness of police department. It seems clear that if these bargaining procedures had any detrimental effect on police effectiveness, four-fifths of the States would not allow these statutes to stand.

Appellants believe that they have amply shown that there is no rational basis for the belief that granting them the rights in question would have a detrimental effect on the police organization. *Kelley v. Johnson*, 44 U.S.L.W. 4469 (U.S. April 6, 1976). Thus there is no rational relation between the withholding from police officers of rights granted to all other public employees in Missouri and the asserted state interest in maintaining a disciplined, effective and efficient police force. Because there is no rational relation, the classification of police officers vis-a-vis all other public employees is an impermissible violation of appellants' right to the equal protection of the laws.

CONCLUSION

For the above reasons, it is respectfully submitted that appellees' Motion to Affirm should be denied and that the issues in the case require plenary consideration of the Supreme Court with briefs on the merits and oral arguments for their resolution.

Respectfully submitted

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